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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

JOON BANG, RAZVAN VICTOR	:	Civil Action No. 2:15-cv-6945
BENGULESCU, GERALD BEZEMS, SCOTT	:	(MCA)(LDW)
CROCKETT, RIFAT GORENER,	:	
CHRISTOPHER LESIEUR, LAWRENCE	:	
MARCUS, and MIKHAIL SULEYMANOV,	:	
individually and on behalf of all others	:	<b>BMW OF NORTH AMERICA, LLC'S</b>
similarly situated,	:	<b>ANSWER TO CONSOLIDATED</b>
	:	<b>SECOND AMENDED CLASS ACTION</b>
Plaintiff,	:	<b>COMPLAINT</b>
	:	
v.	:	
	:	
BMW OF NORTH AMERICA, LLC,	:	
BAVARIAN MOTOR WORKS, and DOES 1	:	
through 10, inclusive,	:	
	:	
Defendants.	:	

Defendant BMW of North America, LLC ("BMW NA"), by and through its undersigned counsel, by way of Answer to the Consolidated Second Amended Class Action Complaint ("SAC") of Plaintiffs Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov ("Plaintiffs"), says as follows:

**As to “I INTRODUCTION”**

1. Responding to paragraph 1, BMW NA admits in or about 2008 certain BMW vehicles contained a V8, twin-turbocharged engine, which has been referred to as the “N63” and that the SAC defines “Class Vehicles” as BMW 5 Series, 6 Series, 7 Series, X5 and X6 vehicles from 2009 through 2014 model years containing the N63.

2. Responding to paragraph 2, BMW NA admits, that the N63 engine’s twin turbochargers are placed on top of the engine, between the engine’s cylinder heads and within the V configuration of the engine block. BMW NA denies the N63 engine is defective and states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

3. Responding to paragraph 3, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph. BMW NA specifically denies that the N63 engine is defective.

4. Responding to paragraph 4, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph. BMW NA specifically denies that the N63 engine is defective.

**As to “II PARTIES”**

5. Responding to paragraph 5, BMW NA admits Beverly Hills BMW is an authorized BMW Center located in Beverly Hills, California. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

6. Responding to paragraph 6, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

7. Responding to paragraph 7, BMW NA admits BMW of Westchester is an authorized BMW Center located in Westchester, New York. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

8. Responding to paragraph 8, BMW NA admits Baron BMW is an authorized BMW Center located in Merriam, Kansas. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same

9. Responding to paragraph 9, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

10. Responding to paragraph 10, BMW NA admits Hansel BMW of Santa Rosa is an authorized BMW Center located in Santa Rosa, California. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

11. Responding to paragraph 11, BMW NA admits New Country BMW is an authorized BMW Center located in Hartford, Connecticut. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

12. Responding to paragraph 12, BMW NA admits Princeton BMW is an authorized

BMW Center located in Princeton, New Jersey. Except as so stated, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

13. Responding to paragraph 13, BMW NA admits that Bayerische Motoren Werke Aktiengesellschaft (named in the SAC as Bavarian Motor Works) (“BMW AG”) has a principal place of business in Munich, Germany. BMW NA denies the remaining allegations in this paragraph.

14. Responding to paragraph 14, BMW NA admits it has a principal place of business located at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey and that it imports, markets, distributes, and warrants BMW brand vehicles in the United States. Except as so stated, BMW NA denies the allegations in this paragraph.

15. Responding to paragraph 15, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

16. Responding to paragraph 16, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

17. Responding to paragraph 17, BMW NA denies the allegations in this paragraph.

18. Responding to paragraph 18, BMW NA denies the allegations in this paragraph.

19. Responding to paragraph 19, BMW NA admits that new BMW brand vehicles come with an owner’s manual and a New Vehicle Limited Warranty. To the extent the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this

paragraph.

20. Responding to paragraph 20, BMW NA admits it engages in business in New Jersey.

21. Responding to paragraph 21, BMW NA denies the allegations in this paragraph.

**As to “III JURISDICTION AND VENUE”**

22. Responding to paragraph 22, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

23. Responding to paragraph 23, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

24. Responding to paragraph 24, BMW NA admits it does business in New Jersey and that it markets, distributes, and warrants BMW brand vehicles in the United States. Except as so stated, allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “New Jersey Law Applies”**

25. Responding to paragraph 25, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

26. Responding to paragraph 26, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

27. BMW NA states it markets, distributes, and warrants BMW brand vehicles in the United States and is headquartered in Woodcliff Lake, New Jersey. Except as so stated, BMW NA denies the allegations in this paragraph.

28. Responding to paragraph 28, BMW NA admits it maintains a presence in New Jersey and denies the remaining allegations in this paragraph.

29. Responding to paragraph 29, BMW NA admits it maintains a presence in New Jersey. BMW NA states that the remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

30. Responding to paragraph 30, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “TOLLING OF STATUTES OF LIMITATIONS”**

31. Responding to paragraph 31, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

32. Responding to paragraph 32, BMW NA denies the Class Vehicles were defective. Except as so stated, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

33. Responding to paragraph 33, BMW NA denies the Class Vehicles were defective. Except as so stated, the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “IV FACTUAL ALLEGATIONS”**

**As to “The N63 Engine”**

34. Responding to paragraph 34, BMW NA admits the allegations of this paragraph.

35. Responding to paragraph 35, BMW NA admits that some BMW Vehicles come with a six-cylinder engine and eight-cylinder engine and each model is indicated by a different ending of the model description. BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

36. Responding to paragraph 36, BMW NA denies the N63 engine is defective and states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

37. Responding to paragraph 37, BMW NA denies the N63 engine is defective and states that it is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “The Oil Consumption Defect”**

38. Responding to paragraph 38, BMW NA denies the allegations of this paragraph.

39. Responding to paragraph 39, BMW NA denies the N63 engine is defective. BMW NA states that the remaining allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

40. Responding to paragraph 40, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

41. Responding to paragraph 41, BMW NA denies the N63 engine is defective. BMW NA states that the remaining allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

42. Responding to paragraph 42, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

43. Responding to paragraph 43, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

44. Responding to paragraph 44, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

45. Responding to paragraph 45, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

46. Responding to paragraph 46, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

47. Responding to paragraph 47, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

48. Responding to paragraph 48, BMW NA states that the allegations contained in



this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

49. Responding to paragraph 49, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

50. Responding to paragraph 50, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

51. Responding to paragraph 51, BMW NA denies the N63 engine is defective. BMW NA admits it has issued technical service bulletins (“TSB”) related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph, including footnote 3.

52. Responding to paragraph 52, BMW NA admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

53. Responding to paragraph 53, BMW NA denies the N63 engine is defective, admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

54. Responding to paragraph 54, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

55. Responding to paragraph 55, BMW NA denies the N63 engine is defective,

admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

56. Responding to paragraph 56, BMW NA denies the N63 engine is defective, admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

57. Responding to paragraph 57, BMW NA states that insofar as the allegations in this paragraph refer to a document, BMW NA refers to that document for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

58. Responding to paragraph 58, BMW NA states that it is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

59. Responding to paragraph 59, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

60. Responding to paragraph 60, BMW NA denies the N63 engine is defective, admits there was a Customer Care Package and refers to the documents referenced for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

61. Responding to paragraph 61, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

62. Responding to paragraph 62, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

63. Responding to paragraph 63, BMW NA denies the N63 engine is defective, admits there was an N63 Customer Loyalty Offer and refers to those documents for their accuracy and content. Except as so stated, BMW denies the allegations in this paragraph.

64. Responding to paragraph 64, BMW NA admits there was an N63 Customer Appreciation Program and refers to those documents for their accuracy and content. Except as so stated, BMW denies the allegations in this paragraph.

65. Responding to paragraph 65, BMW NA admits engine oil is important and denies the remaining allegations in this paragraph.

66. Responding to paragraph 66, BMW NA denies the N63 engine is defective. Insofar as the allegations in this paragraph refer to a document, BMW NA refers to that document for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations of this paragraph.

67. Responding to paragraph 67, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

68. Responding to paragraph 68, BMW NA denies the allegations in this paragraph.

69. Responding to paragraph 69, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

70. Responding to paragraph 70, BMW NA denies the allegations in this paragraph.

**As to “The Battery Defect”**

71. Responding to paragraph 71, BMW NA denies the allegations in this paragraph.

72. Responding to paragraph 72, BMW NA denies the N63 engine is defective.

Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

73. Responding to paragraph 73, BMW NA denies the N63 engine is defective.

Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

74. Responding to paragraph 74, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

75. Responding to paragraph 75, BMW NA denies the N63 engine is defective.

Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

76. Responding to paragraph 76, BMW NA denies the N63 engine is defective.

BMW NA admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

77. Responding to paragraph 77, BMW NA admits it issued TSB's related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW

NA denies the allegations in this paragraph.

78. Responding to paragraph 78, BMW NA denies the N63 engine is defective. BMW NA admits it issued TSBs related to the N63 engine and refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

79. Responding to paragraph 79, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

80. Responding to paragraph 80, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

81. Responding to paragraph 81, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

82. Responding to paragraph 82, BMW NA denies the allegations in this paragraph.

83. Responding to paragraph 83, BMW NA denies the allegations in this paragraph.

84. Responding to paragraph 84, BMW NA denies the allegations of this paragraph.

85. Responding to paragraph 85, BMW NA denies the N63 engine is defective and states that the remaining allegations in this paragraph, including sub-paragraphs (a) to (c), constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “BMW’S NEW VEHICLE LIMITED WARRANTY”**

86. Responding to paragraph 86, BMW NA admits that BMW brand vehicles in the United States come with a New Vehicle Limited Warranty. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

87. Responding to paragraph 87, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

88. Responding to paragraph 88, BMW NA admits certain BMW vehicles have a Certified Pre-Owned Warranty. BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

89. Responding to paragraph 89, BMW NA denies the allegations in this paragraph.

90. Responding to paragraph 90, BMW NA denies the allegations in this paragraph.

91. Responding to paragraph 91, BMW NA denies the allegations in this paragraph.

92. Responding to paragraph 92, BMW NA denies the allegations in this paragraph.

93. Responding to paragraph 93, BMW NA, admits it has not recalled the “Class Vehicles” and denies the remaining allegations in this paragraph.

94. Responding to paragraph 94, BMW NA denies the allegations in this paragraph.

95. Responding to paragraph 95, BMW NA denies the allegations in this paragraph.

96. Responding to paragraph 96, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

97. Responding to paragraph 97, BMW NA states that the allegations contained in

this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

98. Responding to paragraph 98, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

**As to “Plaintiff’s N63 Vehicle Failures”**

**As to “Plaintiff Joon Bang”**

99. Responding to paragraph 99, BMW NA admits Beverly Hills BMW is an authorized BMW Center. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

100. Responding to paragraph 100, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

101. Responding to paragraph 101, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

102. Responding to paragraph 102, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

103. Responding to paragraph 103, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

104. Responding to paragraph 104, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

105. Responding to paragraph 105, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

106. Responding to paragraph 106, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

107. Responding to paragraph 107, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Razvan Victor Bengulescu”**

108. Responding to paragraph 108, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

109. Responding to paragraph 109, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

110. Responding to paragraph 110, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

111. Responding to paragraph 111, BMW NA is without knowledge and information



sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

112. Responding to paragraph 112, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

113. Responding to paragraph 113, BMW NA admits BMW Northwest, Inc. is an authorized BMW Center and denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

114. Responding to paragraph 114, BMW NA denies the N63 engine is defective and is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

115. Responding to paragraph 115, BMW NA denies the N63 engine is defective and is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

116. Responding to paragraph 116, BMW NA denies the N63 engine is defective and is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Gerald Bezems”**

117. Responding to paragraph 117, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

118. Responding to paragraph 118, BMW NA is without knowledge and information

sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

119. Responding to paragraph 119, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

120. Responding to paragraph 120, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

121. Responding to paragraph 121, BMW NA admits Daniels BMW is an authorized BMW Center. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

122. Responding to paragraph 122, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

123. Responding to paragraph 123, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

124. Responding to paragraph 124, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Scott Crockett”**

125. Responding to paragraph 125, BMW NA admits Baron BMW is an authorized BMW Center. BMW NA is without knowledge and information sufficient to form a belief as to

the truth of the remaining allegations in this paragraph and, on that basis, denies same.

126. Responding to paragraph 126, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

127. Responding to paragraph 127, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

128. Responding to paragraph 128, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

129. Responding to paragraph 129, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

130. Responding to paragraph 130, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

131. Responding to paragraph 131, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

132. Responding to paragraph 132, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

133. Responding to paragraph 133, BMW NA denies the N63 engine is defective.

BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Rifat Gorener”**

134. Responding to paragraph 134, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

135. Responding to paragraph 135, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

136. Responding to paragraph 136, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

137. Responding to paragraph 137, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

138. Responding to paragraph 138, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

139. Responding to paragraph 139, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Christopher LeSieur”**

140. Responding to paragraph 140, BMW NA admits BMW of Santa Rosa is an

authorized BMW retailer. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

141. Responding to paragraph 141, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

142. Responding to paragraph 142, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

143. Responding to paragraph 143, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

144. Responding to paragraph 144, BMW NA denies the n63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

145. Responding to paragraph 145, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

146. Responding to paragraph 146, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

147. Responding to paragraph 147, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis,

denies same.

148. Responding to paragraph 148, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

149. Responding to paragraph 149, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

150. Responding to paragraph 150, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

151. Responding to paragraph 151, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

152. Responding to paragraph 152, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

153. Responding to paragraph 153, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Lawrence Marcus”**

154. Responding to paragraph 154, BMW NA admits New Country BMW is an authorized BMW Center. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies

same.

155. Responding to paragraph 155, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

156. Responding to paragraph 156, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

157. Responding to paragraph 157, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

158. Responding to paragraph 158, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

159. Responding to paragraph 159, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

160. Responding to paragraph 160, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

161. Responding to paragraph 161, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

162. Responding to paragraph 162, BMW NA denies the N63 engine is defective.

BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

163. Responding to paragraph 163, BMW NA denies the N63 engine is defective.

BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “Plaintiff Mikhail Suleymanov”**

164. Responding to paragraph 164, BMW NA admits Princeton BMW is an authorized BMW Center. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

165. Responding to paragraph 165, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

166. Responding to paragraph 166, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

167. Responding to paragraph 167, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

168. Responding to paragraph 168, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

169. Responding to paragraph 169, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis,



denies same.

170. Responding to paragraph 170, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

171. Responding to paragraph 171, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

172. Responding to paragraph 172, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

173. Responding to paragraph 173, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

174. Responding to paragraph 174, BMW NA denies the N63 engine is defective. BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to BMW's Knowledge of the Defects"**

175. Responding to paragraph 175, BMW NA denies the allegations in this paragraph.

176. Responding to paragraph 176, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

177. Responding to paragraph 177, BMW NA denies the N63 engine is defective and

states the remaining allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

178. Responding to paragraph 178, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

179. Responding to paragraph 179, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

**As to “V CLASS ACTION ALLEGATIONS”**

**As to “The Proposed Classes”**

180. Responding to paragraph 180, BMW NA acknowledges that Plaintiffs purport to bring this action as a class action as described in the SAC. BMW NA denies this action is appropriate for treatment as a class action and denies the claims alleged have merit.

181. Responding to paragraph 181, BMW NA acknowledges that Plaintiffs purport to bring this action as a class action as describes in the SAC. BMW NA denies this action is appropriate for treatment as a class action and denies the claims alleged have merit.

182. Responding to paragraph 182, BMW NA states this paragraph contains no allegations for which a response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

183. Responding to paragraph 183, BMW NA states this paragraph contains no

allegations for which a response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

184. Responding to paragraph 184, BMW NA states this paragraph contains no allegations for which a response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “Numerosity”**

185. Responding to paragraph 185, BMW NA the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

186. Responding to paragraph 186, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

187. Responding to paragraph 187, BMW NA states that the allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

188. Responding to paragraph 188, BMW NA states this paragraph contains no allegations for which a response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “Common Questions of Law and Fact”**

189. Responding to paragraph 189, BMW NA states the allegations in paragraph 189, including sub-paragraphs (a) through (t), constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “Typicality”**

190. Responding to paragraph 190, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “Adequacy of Representation”**

191. Responding to paragraph 191, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

192. Responding to paragraph 192, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

193. Responding to paragraph 193, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “Superiority”**

194. Responding to paragraph 194, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

195. Responding to paragraph 195, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

196. Responding to paragraph 196, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response

is required, BMW NA denies the allegations in this paragraph.

197. Responding to paragraph 197, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “VI CAUSES OF ACTION”**

**As to “COUNT I”**

**Asserting “Violation of the New Jersey Consumer Fraud Act**

**(N.J. Stat. Ann. § 56:8-1, *et seq.*)**

**(By All Plaintiffs On Behalf Of The Nationwide Class Or,  
Alternatively, By Plaintiff Suleymanov on Behalf of the New Jersey Class)”**

198. Responding to paragraph 198, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

199. Responding to paragraph 199, BMW NA denies the allegations in this paragraph.

200. Responding to paragraph 200, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

201. Responding to paragraph 201, BMW NA states is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

202. Responding to paragraph 202, BMW NA denies the allegations in this paragraph.

203. Responding to paragraph 203, BMW NA denies the allegations in this paragraph.

204. Responding to paragraph 204, BMW NA denies the allegations in this paragraph.

205. Responding to paragraph 205, BMW NA denies the allegations in this paragraph.

206. Responding to paragraph 206, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

207. Responding to paragraph 207, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

208. Responding to paragraph 208, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

209. Responding to paragraph 209, BMW NA denies the allegations in this paragraph.

210. Responding to paragraph 210, BMW NA denies the allegations in this paragraph.

211. Responding to paragraph 211, BMW NA denies the allegations in this paragraph.

212. Responding to paragraph 212, BMW NA denies the allegations in this paragraph.

213. Responding to paragraph 213, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies same.

**As to “COUNT II”**  
**Asserting “Breach of Express Warranty**  
**(By All Plaintiffs On Behalf Of Nationwide Class Or,**  
**Alternatively, on Behalf of the State Classes)”**

214. Responding to paragraph 214, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

215. Responding to paragraph 215, BMW NA denies the allegations in this paragraph.

216. Responding to paragraph 216, BMW NA admits it warrants “Class Vehicles” and states that the remaining allegations contained in this paragraph refer to documents to which BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

217. Responding to paragraph 217, BMW NA states that the allegations contained in

this paragraph refer to documents to which BMW NA refers for their accuracy and content.

Except as so stated, BMW NA denies the allegations in this paragraph.

218. Responding to paragraph 218, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

219. Responding to paragraph 219, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

220. Responding to paragraph 220, BMW NA denies the allegations in this paragraph.

221. Responding to paragraph 221, BMW NA denies the allegations in this paragraph.

222. Responding to paragraph 222, BMW NA denies the allegations in this paragraph.

223. Responding to paragraph 223, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

224. Responding to paragraph 224, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

225. Responding to paragraph 225, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

226. Responding to paragraph 226, BMW NA denies the allegations in this paragraph.

227. Responding to paragraph 227, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

**As to “COUNT III”**  
**Asserting “Breach of Implied Warranty**  
**(By All Plaintiffs On Behalf Of Nationwide Class Or,**  
**Alternatively, on Behalf of the State Classes)”**

228. Responding to paragraph 228, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

229. Responding to paragraph 229, BMW NA admits it markets the “Class Vehicles.” BMW NA denies the remaining allegations in this paragraph.

230. Responding to paragraph 230, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

231. Responding to paragraph 231, BMW NA denies the allegations in this paragraph.

232. Responding to paragraph 232, BMW NA denies the N63 engine is defective. Insofar as the allegations contained in this paragraph refer to documents, BMW NA refers to those documents for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

233. Responding to paragraph 233, BMW NA denies the N63 engine is defective. The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.



234. Responding to paragraph 234, BMW NA denies the allegations in this paragraph.

235. Responding to paragraph 235, BMW NA denies the allegations in this paragraph.

236. Responding to paragraph 236, BMW NA denies the allegations in this paragraph.

237. Responding to paragraph 237, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

**As to “COUNT IV”**  
**Asserting “Violation of Magnuson-Moss Warranty Act**  
**(15 U.S.C. § 2301, *et seq.*)**  
**(By All Plaintiffs On Behalf Of Nationwide Class)”**

238. Responding to paragraph 238, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

239. Responding to paragraph 239, BMW NA the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

240. Responding to paragraph 240, BMW NA the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

241. Responding to paragraph 241, BMW NA the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

242. Responding to paragraph 242, BMW NA denies the allegations in this paragraph.

243. Responding to paragraph 243, BMW NA admits it warrants certain BMW brand vehicles. The remaining allegations contained in this paragraph refer to documents to which

BMW NA refers for their accuracy and content. Except as so stated, BMW NA denies the allegations in this paragraph.

244. Responding to paragraph 244, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

245. Responding to paragraph 245, BMW NA denies the allegations in this paragraph.

246. Responding to paragraph 246, BMW NA admits it warrants certain BMW brand vehicles. The remaining allegations contained in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

247. Responding to paragraph 247, BMW NA denies the allegations in this paragraph.

248. Responding to paragraph 248, BMW NA denies the allegations in this paragraph.

249. Responding to paragraph 249, BMW NA denies the allegations in this paragraph.

250. Responding to paragraph 250, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

251. Responding to paragraph 251, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

**As to “COUNT V”**  
**Asserting “Violation of California’s Consumer Legal Remedies Act**  
**(California Civil Code § 1750, *et seq.*)**  
**(By Plaintiffs Bang and LeSieur on Behalf of the California Class)”**

252. Responding to paragraph 252, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

253. Responding to paragraph 253, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

254. Responding to paragraph 254, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

255. Responding to paragraph 255, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

256. Responding to paragraph 256, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

257. Responding to paragraph 257, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

258. Responding to paragraph 258, BMW NA denies the allegations in this paragraph.

259. Responding to paragraph 259, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response

is required, BMW NA denies the allegations in this paragraph.

260. Responding to paragraph 260, BMW NA denies the allegations in this paragraph.

261. Responding to paragraph 261, BMW NA denies the allegations in this paragraph.

262. Responding to paragraph 262, BMW NA denies the allegations in this paragraph.

263. Responding to paragraph 263, BMW NA denies the allegations in this paragraph.

264. Responding to paragraph 264, BMW NA states the allegations in this paragraph, including sub-paragraphs (a) – (c) constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

265. Responding to paragraph 265, BMW NA denies the allegations in this paragraph.

266. Responding to paragraph 266, BMW NA denies the N63 engine is defective and that it concealed or failed to disclose facts to plaintiffs. The remaining allegations in this paragraph constitute conclusions of law to which no response is required or; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

267. Responding to paragraph 267, BMW NA denies the N63 engine is defective and that it concealed or failed to disclose facts to plaintiffs. The remaining allegations in this paragraph constitute conclusions of law to which no response is required or; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

268. Responding to paragraph 268, BMW NA denies the allegations in this paragraph.

269. Responding to paragraph 269, BMW NA denies the allegations in this paragraph.

270. Responding to paragraph 270, BMW NA denies the allegations in this paragraph.

271. Responding to paragraph 271, BMW NA denies it violated “CLRA” and the remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this

paragraph.

**As to “COUNT VI”**  
**Asserting “Violation of California’s Business and Professional Code**  
**(California Business and Professional Code § 17200.)**  
**(By Plaintiffs Bang and LeSieur on Behalf of the California Class)”**

272. Responding to paragraph 272, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

273. Responding to paragraph 273, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

274. Responding to paragraph 274, BMW NA denies the allegations in this paragraph.

275. Responding to paragraph 275, BMW NA denies the allegations in this paragraph.

276. Responding to paragraph 276, BMW NA denies the allegations in this paragraph.

277. Responding to paragraph 277, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

278. Responding to paragraph 278, BMW NA denies the allegations in this paragraph.

279. Responding to paragraph 279, BMW NA states this paragraph contains no allegations for which a response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “COUNT VII”**  
**Asserting “Violation of the California False Advertising Law**  
**(California Business and Professional Code § 17500.)**  
**(By Plaintiffs Bang and LeSieur on Behalf of the California Class)”**

280. Responding to paragraph 280, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

281. Responding to paragraph 281, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

282. Responding to paragraph 282, BMW NA denies the allegations in this paragraph.

283. Responding to paragraph 283, BMW NA denies the allegations in this paragraph.

284. Responding to paragraph 284, BMW NA denies the allegations in this paragraph.

285. Responding to paragraph 285, BMW NA denies the allegations in this paragraph.

286. Responding to paragraph 286, BMW NA denies it engages in any “unfair, unlawful and/or deceptive practices.” As to the remainder of the allegations in this paragraph, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

**As to “COUNT VIII”**

**Asserting “Violation of the Song Beverly Act – Breach of Express Warranty  
(California Civil Code §§ 1792, 1791.1, *et seq.*)  
(By Plaintiffs Bang and LeSieur on Behalf of the California Class)”**

287. Responding to paragraph 287, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

288. Responding to paragraph 288, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

289. Responding to paragraph 289, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

290. Responding to paragraph 290, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response

is required, BMW NA denies the allegations in this paragraph.

291. Responding to paragraph 291, BMW NA is without knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies same.

292. Responding to paragraph 292, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

293. Responding to paragraph 293, BMW NA denies the allegations in this paragraph.

294. Responding to paragraph 294, BMW NA denies the allegations in this paragraph.

295. Responding to paragraph 295, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

296. Responding to paragraph 296, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “COUNT IX”**  
**Asserting “Violation of the Song Beverly Act – Breach of Implied Warranty**  
**(California Civil Code §§ 1792, 1791.1, *et seq.*)**  
**“By Plaintiffs Bang and LeSieur on Behalf of the California Class)”**

297. Responding to paragraph 297, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

298. Responding to paragraph 298, BMW NA admits it markets and distributes BMW brand vehicles. Except as so stated, BMW NA denies the remaining allegations in this paragraph.

299. Responding to paragraph 299, BMW NA denies the allegations in this paragraph.

300. Responding to paragraph 300, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

301. Responding to paragraph 301, BMW NA denies the allegations in this paragraph.

302. Responding to paragraph 302, BMW NA denies the allegations in this paragraph.

**As to “COUNT X”**  
**Asserting “Violation of New York General Business Law § 349**  
**(N.Y. Gen. Bus. Law. § 349)**  
**(By Plaintiff Bezems on Behalf of the New York Class)”**

303. Responding to paragraph 303, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

304. Responding to paragraph 304, BMW NA acknowledges that Plaintiff Bezems purports to bring this claim as described in the SAC. BMW NA denies this claim is appropriate for treatment as a class action and denies the claims alleged have merit.

305. Responding to paragraph 305, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

306. Responding to paragraph 306, BMW NA denies the allegations in this paragraph.

307. Responding to paragraph 307, BMW NA denies the allegations in this paragraph.

308. Responding to paragraph 308, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

309. Responding to paragraph 309, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.



310. Responding to paragraph 310, BMW NA denies the allegations in this paragraph.

311. Responding to paragraph 311, BMW NA denies the allegations in this paragraph.

**As to “COUNT XI”**  
**Asserting “Violation of New York General Business Law § 350**  
**(N.Y. Gen. Bus. Law. § 350)**  
**(By Plaintiff Bezems on Behalf of the New York Class)”**

312. Responding to paragraph 312, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

313. Responding to paragraph 313, BMW NA acknowledges that Plaintiff Bezems purports to bring this claim as described in the SAC. BMW NA denies this claim is appropriate for treatment as a class action and denies the claims alleged have merit.

314. Responding to paragraph 314, insofar as the allegations in this paragraph refer to a statute, BMW NA refers to that statute for the contents and accuracy of the allegations in this paragraph. Except as so stated, BMW NA denies the allegations in this paragraph.

315. Responding to paragraph 315, BMW NA denies the allegations in this paragraph.

316. Responding to paragraph 316, BMW NA denies the allegations in this paragraph.

317. Responding to paragraph 317, BMW NA denies the allegations in this paragraph.

318. Responding to paragraph 318, BMW NA denies the allegations in this paragraph.

319. Responding to paragraph 319, BMW NA denies the allegations in this paragraph.

320. Responding to paragraph 320, BMW NA denies it engaged in any “unfair, unlawful and/or deceptive practices.” The remaining allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

321. Responding to paragraph 321, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required or; if the court

determines a response is required, BMW NA denies the allegations in this paragraph.

**As to “COUNT XII”**  
**Asserting “Violation of the Washington Consumer Protection Act**  
**(RCW 19.86 *et seq.*)**  
**(By Plaintiff Bengulescu on Behalf of the Washington Class)”**

322. Responding to paragraph 322, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

323. Responding to paragraph 323, BMW NA acknowledges that Plaintiff Bengulescu purports to bring this claim as described in the SAC. BMW NA denies this claim is appropriate for treatment as a class action and denies the claims alleged have merit.

324. Responding to paragraph 324, BMW NA denies the allegations in this paragraph.

325. Responding to paragraph 325, BMW NA denies the allegations in this paragraph.

326. Responding to paragraph 326, BMW NA denies the allegations in this paragraph.

327. Responding to paragraph 327, BMW NA denies the allegations in this paragraph.

328. Responding to paragraph 328, BMW NA denies the allegations in this paragraph.

329. Responding to paragraph 329, BMW NA denies the allegations in this paragraph.

330. Responding to paragraph 330, BMW NA denies the allegations in this paragraph.

331. Responding to paragraph 331, BMW NA denies the allegations in this paragraph.

332. Responding to paragraph 332, BMW NA denies the allegations in this paragraph.

333. Responding to paragraph 333, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

334. Responding to paragraph 334, BMW NA denies the allegations in this paragraph.

**As to “COUNT XIII”**  
**Asserting “Violation of the Kansas Consumer Protection Act**  
**(K.S.A. § 50-623, *et seq.*)**  
**(By Plaintiff Crockett on Behalf of the Kansas Class)”**

335. Responding to paragraph 335, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

336. Responding to paragraph 336, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

337. Responding to paragraph 337, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

338. Responding to paragraph 338, BMW NA denies the allegations in this paragraph.

339. Responding to paragraph 339, BMW NA denies the allegations in this paragraph.

340. Responding to paragraph 340, BMW NA denies the allegations in this paragraph.

341. Responding to paragraph 341, BMW NA denies the allegations in this paragraph.

342. Responding to paragraph 342, BMW NA denies the allegation in this paragraph.

343. Responding to paragraph 343, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

344. Responding to paragraph 344, BMW NA denies the allegations in this paragraph.

345. Responding to paragraph 345, BMW NA denies the allegations in this paragraph.

346. Responding to paragraph 346, BMW NA acknowledges that plaintiffs purport to seek damages as described in the SAC. BMW NA denies plaintiffs are entitled to damages and denies the claims alleged have merit.

**As to “COUNT XIV”**  
**Asserting “Violation of the Texas Deceptive Practices**  
**(Tex. Bus. & Com. Code § 17.41, *et seq.*)**  
**(By Plaintiff Gorener of the Texas Class)”**

347. Responding to paragraph 347, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

348. Responding to paragraph 348, BMW NA acknowledges that Plaintiff Gorener purports to bring this claim as described in the SAC. BMW NA denies this claim is appropriate for treatment as a class action and denies the claims alleged have merit.

349. Responding to paragraph 349, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

350. Responding to paragraph 350, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

351. Responding to paragraph 351, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

352. Responding to paragraph 352, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

353. Responding to paragraph 353, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

354. Responding to paragraph 354, BMW NA denies the allegations in this paragraph.

355. Responding to paragraph 355, BMW NA denies the allegations in this paragraph.

356. Responding to paragraph 356, BMW NA denies the allegations in this paragraph.

357. Responding to paragraph 357, BMW NA denies the allegations in this paragraph.

358. Responding to paragraph 358, BMW NA denies the allegations in this paragraph.

359. Responding to paragraph 359, BMW NA denies the allegations in this paragraph.

360. Responding to paragraph 360, BMW NA states the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

361. Responding to paragraph 361, BMW NA denies the allegations in this paragraph.

**As to “COUNT XV”**  
**Asserting “Violation of the Connecticut Deceptive Trade Practices Act**  
**(Conn. Gen. Stat. Ann. § 42-100a, *et seq.*)**  
**(By Plaintiff Marcus on Behalf of the Connecticut Class)”**

362. Responding to paragraph 362, BMW NA incorporates its responses to the above allegations by reference as if set forth herein at length.

363. Responding to paragraph 363, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

364. Responding to paragraph 364, BMW NA states that the allegations in this paragraph constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

365. Responding to paragraph 365, BMW NA denies the allegations in this paragraph.

366. Responding to paragraph 366, BMW NA denies the allegations in this paragraph.

367. Responding to paragraph 367, BMW NA denies the allegations in this paragraph.

368. Responding to paragraph 368, BMW NA states the allegations in this paragraph

constitute conclusions of law to which no response is required; if the court determines a response is required, BMW NA denies the allegations in this paragraph.

369. Responding to paragraph 369, BMW NA denies the allegations in this paragraph.

370. Responding to paragraph 370, BMW NA denies the allegations in this paragraph.

371. Responding to paragraph 371, BMW NA states the allegation with respect to notice in this paragraph constitutes a conclusion of law to which no response is required; if the court determines a response is required, BMW NA denies that allegation. BMW NA denies the remaining allegations in this paragraph.

**As to “PRAYER FOR RELIEF”**

BMW NA denies that plaintiffs are entitled to any of the relief they seek in their Prayer for Relief, including sub-paragraphs (a) through (i).

**GENERAL DENIAL**

BMW NA denies all allegations not specifically admitted above.

**SEPARATE DEFENSES**

As used herein, “Plaintiffs” refers to the individual plaintiffs or, as appropriate, to any other members of a purported class or classes.

**FIRST SEPARATE DEFENSE**

The Consolidated Second Amended Class Action Complaint fails to state a claim upon which relief can be granted.

**SECOND SEPARATE DEFENSE**

Plaintiffs lack standing to prosecute this action.

**THIRD SEPARATE DEFENSE**

To the extent Plaintiffs allege a defect, the alleged defect has been cured, or Plaintiffs

failed to give timely notice and/or a reasonable opportunity to cure.

**FOURTH SEPARATE DEFENSE**

Plaintiffs' claims against BMW NA are barred by the doctrine of laches.

**FIFTH SEPARATE DEFENSE**

Plaintiffs' claims against BMW NA are barred by the doctrines of waiver and/or estoppel.

**SIXTH SEPARATE DEFENSE**

Plaintiffs' claims against BMW NA are barred by the applicable statute of limitations.

**SEVENTH SEPARATE DEFENSE**

Plaintiffs' claims for enhanced or punitive damages, if any, are barred because any award of enhanced or punitive damages in the present case would violate the Fourteenth Amendment to the Constitution of the United States which guarantees due process.

**EIGHTH SEPARATE DEFENSE**

Plaintiffs' claims for enhanced or punitive damages, if any, are barred because they are not supported by clear and convincing evidence as required by the due process clause of the Fourteenth Amendment to the Constitution of the United States.

**NINTH SEPARATE DEFENSE**

Plaintiffs' claims for enhanced or punitive damages, if any, are barred because the alleged harm suffered was not the result of BMW NA's acts or omissions, and such acts or omissions, if any, were not performed with knowledge, intentionally, or willfully.

**TENTH SEPARATE DEFENSE**

Any award of enhanced or punitive damages would violate the excessive fines clause of the Eighth Amendment to the Constitution of the United States.

**ELEVENTH SEPARATE DEFENSE**

The alleged damages, if any, were caused by the actions or inactions of persons over whom BMW NA exercised no control.

**TWELFTH SEPARATE DEFENSE**

Plaintiffs' claims are barred by lack of subject matter jurisdiction.

**THIRTEENTH SEPARATE DEFENSE**

The asserted claims are barred to the extent that there is no legal injury, including no injury to persons who leased or purchased the vehicles in question and experienced no problems or, if they experienced problems, those problems were resolved under warranty or otherwise without cost.

**FOURTEENTH SEPARATE DEFENSE**

Any claims for damages or other monetary recovery by Plaintiffs or on behalf of persons claimed to be members of the purported class must be offset and reduced by the value received from the vehicles purchased or leased.

**FIFTEENTH SEPARATE DEFENSE**

Plaintiffs' purported class cannot properly be maintained as a class action because the named Plaintiffs are not representative of the purported class.

**SIXTEENTH SEPARATE DEFENSE**

Plaintiffs' purported class cannot properly be maintained as a class action because the named Plaintiffs cannot adequately represent the purported class.

**SEVENTEENTH SEPARATE DEFENSE**

Plaintiffs' purported class cannot properly be maintained as a class action because the requirements for certification cannot be met and certification of the proposed class would result



in a denial of due process to this defendant and the putative class.

**EIGHTEENTH SEPARATE DEFENSE**

Plaintiffs' purported class cannot properly be maintained as a class action because there are insufficient issues of law and fact common to the class.

**NINETEENTH SEPARATE DEFENSE**

Plaintiffs' claim to a class action should be denied because variations from driver to driver and type of driving are not susceptible of class-wide proof.

**TWENTIETH SEPARATE DEFENSE**

Plaintiffs and the purported class members have failed to mitigate their damages.

**TWENTY-FIRST SEPARATE DEFENSE**

Plaintiffs and putative class members may be barred, in whole or in part, from recovery because they have made statements or taken actions which estop them from asserting their claims.

**TWENTY-SECOND SEPARATE DEFENSE**

The asserted claims are barred to the extent any injury sustained by Plaintiffs or putative class members was caused by their own negligent conduct. Further, Plaintiffs and putative class members who misused, abused, and/or failed properly to maintain their vehicles may be barred, in whole or in part, from recovery.

**TWENTY-THIRD SEPARATE DEFENSE**

Plaintiffs and putative class members whose vehicles have been altered may be barred, in whole or in part, from recovery.

**TWENTY-FOURTH SEPARATE DEFENSE**

Plaintiffs and putative class members whose vehicles have been sold, destroyed, or

otherwise disposed of may be barred, in whole or in part, from recovery.

**TWENTY-FIFTH SEPARATE DEFENSE**

Plaintiffs and putative class members may be barred from recovery, in whole or in part, if in this or other courts, they have brought actions and have received judgments on parts of some or all claims asserted herein.

**TWENTY-SIXTH SEPARATE DEFENSE**

Plaintiffs and putative class members may not seek equitable relief because they have an adequate remedy at law.

**TWENTY-SEVENTH SEPARATE DEFENSE**

If any persons claiming to be members of the purported class have released claims, they may be barred from recovery, in whole or in part, by the release(s) they provided.

**TWENTY-EIGHTH SEPARATE DEFENSE**

If any persons claiming to be members of the purported class members have accepted accord and satisfaction, they may be barred from recovery, in whole or in part, on the ground that they are subject to the defense of accord and satisfaction.

**TWENTY-NINTH SEPARATE DEFENSE**

Plaintiffs' or any other purported class member's claims may be barred, in whole or in part, to the extent that they engaged in unlawful, inequitable, or improper conduct.

**THIRTIETH SEPARATE DEFENSE**

BMW NA presently has insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, defenses that govern the claims asserted by Plaintiff and on behalf of persons claimed to be members of the purposed class.

**WHEREFORE**, defendant BMW of North America, LLC prays that:

1. Plaintiffs and the purported class be awarded no relief of any sort;
2. Judgment be entered in favor of BMW of North America, LLC;
3. Costs and fees be awarded in favor of BMW of North America, LLC; and
4. For such other and further relief as the court deems appropriate.

Dated: January 16, 2017

By: /s/ Daniel Z. Rivlin

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**CERTIFICATE OF SERVICE**

On this date, I caused a copy of the foregoing Answer to be served via the Court's  
CM/ECF system upon:

Matthew D. Schelkopf, Esq.  
McCuneWright, LLP  
1055 Westlakes Drive, Suite 300  
Berwyn, Pennsylvania 19312  
Attorneys for Plaintiff

/s/ Daniel Z. Rivlin

Daniel Z. Rivlin

Newark, New Jersey  
January 16, 2017